IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

LETTERS PATENT APPEAL NO. 100 OF 2007
IN
WRIT PETITION NO. 1084 OF 2007

Nirala Education Society & Ors. vs. Jugalkishore Bhagwatiprasad Shukla & Ors.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : D.D. SINHA AND
B.P. DHARMADHIKARI, JJ.
AUGUST 16, 2007.

Heard Shri Bhangde, learned Senior Counsel for the appellants, Respondent No.1 in person and Shri Deopujari, learned Assistant Government Pleader for respondents No. 2 & 3.

The present Letters Patent Appeal is directed against the order passed by the learned Single Judge dated 2.4.2007 whereby Writ Petition No.1084 of 2007 filed by the present appellant came to be dismissed.

Shri Bhangde, learned Senior Counsel for the appellants has contended that the controversy involved in the present Letters Patent Appeal is in respect of the order passed by the School Tribunal whereby the inordinate and unexplained delay of

two years and seven months came to be condoned without any justification and without their being sufficient cause to do so. It is submitted that the said order of the School Tribunal was challenged by the appellant by filing Writ Petition No.1084 of 2007 and since learned Single Judge has dismissed the same hence present Letters Patent Appeal.

Shri Bhangde, learned Senior Counsel has submitted that the order impugned is challenged on the following grounds :

1. Whether Respondent No.1, who alleged to have filed the representations dated 28.9.1992, 14.12.1992, 08.07.1993 and 13.05.1994 before the Deputy Director of Education against his order of termination dated 1.4.1992 (with effect from 1.5.1992) can said to be sufficient cause for condoning the delay in approaching the Tribunal.
2. In the absence of evidence to show that Respondent No.1 in fact has made such representations to the Deputy Director of Education, whether the Tribunal as well as learned Single Judge were justified in placing reliance on such representations which are in fact not supported by the record of the o/o the

Dy. Director of Education.

3. In absence of evidence demonstrating that such representations are really made by Respondent No.1, the ground raised by Respondent No.1 in this respect is false ground and is raised to mislead the Court and would amount to taking a false plea, to get rid of the inordinate delay caused in approaching the Tribunal.

Shri Bhangde, learned Senior Counsel has contended that merely because Respondent No.1 was making representation after representation against the order of termination, that cannot be treated to be the sufficient cause to condone the delay particularly when there is specific statutory remedy by way of appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977, was available to Respondent No.1. It is, therefore, contended that the Tribunal as well as learned Single Judge were not justified in condoning the delay on this ground. In support of his contention, he has placed reliance upon the decision of this Court in the case of Secretary, J.A.C. Trust vs. Chintamani, reported at 2000 (2) Mh. L.J. 267, Kalpana vs. G.K.D. Trust, reported at 2007 (3) Mh. L.J. 486 and Shiv Dass vs. Union of India & Ors.,

reported at 2007 (2) Scale 325.

Shri Bhangde, learned Senior Counsel, has further contended that in absence of evidence from the Education department that the o/o Deputy Director of Education in fact has received such representations, the ground raised by Respondent No.1 in this respect in his application for condonation of delay is a false ground raised by Respondent No.1 and, therefore, neither the Tribunal nor this Court should have shown indulgence on the basis of such false plea taken by Respondent No.1 for condonation of delay. On the other hand, the Tribunal ought to have rejected the application of Respondent No.1 as well as Writ Petition ought to have been allowed on this sole ground. In order to substantiate the contention, reliance is placed on the decision of the Hon'ble Apex Court in the case of Binod Bihari Singh vs. Union of India, reported at (1993) 1 SCC 572.

Shri Bhangde, learned Senior Counsel, has submitted that since the issue involved pertains to condonation of delay only, therefore, the appellants are not arguing the matter on merits and in case this Court is not inclined to show indulgence, in that event the issue of merit

may be kept open.

Respondent No.1 - party-in-person has supported the order passed by the Tribunal as well as learned Single Judge and has contended that in reply filed by the Deputy Director of Education dated 16.8.2007, the authority has admitted to have received representation of the petitioner dated 13.9.1994 against the order of termination as well as sending of reply by the Deputy Director of Education to the legal notice dated 13.8.1994 issued by the lawyer of Respondent No.1 to the Deputy Director of Education which pertains to the illegal termination of Respondent No.1. Respondent No.1, therefore, contended that merely because the record for the year 1992-93 is not available in the office of Deputy Director of Education, that cannot be a ground to conclude that Respondent No.1 did not make such representation or has taken a false plea in this respect before the Tribunal as well as before the learned Single Judge. Respondent No.1 has, therefore, contended that the cause shown for causing delay in approaching School Tribunal is sufficient cause and therefore the Tribunal as well as learned Single Judge were justified in rejecting the contention canvassed by the learned

counsel for the appellant.

Shri Deopujari, learned Assistant Government Pleader, has stated that so far as representations referred to hereinabove for the year 1992-93 are concerned, in the absence of availability of records for the relevant years in the office of Deputy Director of Education, it is difficult to express as to whether Respondent No.1 in fact submitted the representations to the Deputy Director of Education or not. However, the learned Assistant Government Pleader has submitted that the office of Deputy Director of Education did receive the representation of the appellant dated 13.09.1994 as well as legal notice issued by the lawyer of Respondent No.1 on 13.08.1994 whereby Respondent No.1 agitated his grievance about the order of termination issued by the management.

We have given our anxious thoughts to the various contentions canvassed by the respective parties and also perused the order passed by the learned Single Judge.

At the outset, we must express that there is no quarrel about the proposition laid down by this Court as well as by the Hon'ble Apex Court in the judgments cited and relied on by the learned

Senior Counsel Shri Bhangde. However, we need to see the facts and circumstances of the present case whether the law laid down in the said decisions can further the case of the appellants.

In the instant case, it is not disputed that the delay which is caused in approaching the Tribunal against the order of termination by Respondent No.1 is of 2 years and 7 months. It is the case of Respondent No.1 that his services came to be terminated vide order dated 1.4.1992 by the management with effect from 1.5.1992. It is the case of Respondent No.1 that he made representations to the Deputy Director of Education on dates mentioned hereinabove as well as on 13.09.1994. The Deputy Director of Education has not disputed to have received the representation of the petitioner dated 13.09.1994 as well as legal notice issued by lawyer of Respondent No.1 dated 13.08.1994. In view of these undisputed facts, it is very difficult for us to conclude that Respondent No.1 did not approach the Deputy Director of Education in the year 1992 and made a grievance against the order of termination. Similarly, merely because the record for the year 1992-93 is not available with the office of Deputy Director of Education, that by

itself does not render the plea taken by Respondent No.1 in this respect in his application for condonation of delay as false plea.

We have already observed hereinabove that there is no quarrel with the law laid down by this Court in the case of Kalpana vs. G.K.D. Trust (supra), Secretary, J.A.C. Trust vs. Chintamani (supra), as well as law laid down by the Hon'ble Apex Court in Shiv Dass vs. Union of India & Ors. (supra). However, so far as the case of Secretary, J.A.C. Trust is concerned, the delay was of more than four years whereas in the case of Kalpana vs. G.K.D. Trust (supra), the duration of the delay is not clear. In any case, in the instant case, the delay caused is two years and seven months and in the given set of circumstances, it would be possible to hold that pursuing representations before the authority without approaching the competent forum, and if the delay caused is hopelessly inordinate and totally unjustified, in such situation, it cannot be a ground for condoning such inordinate and unjustified delay. Similarly, it is well settled that the litigant must approach the Tribunal or Court within the prescribed time. Similarly, if it is noticed that material facts are either suppressed from the

Court in order to obtain favourable orders or a false plea is taken in order to mislead the Court, in such situation, writ petition is liable to be dismissed solely on this count.

However, in the instant case, for the reasons stated hereinabove, it is difficult for us to conclude that the plea taken by Respondent No.1 in respect of submitting representation to the Deputy Director of Education was a false plea merely because the record of the office of the Deputy Director of Education for the relevant year is not traceable and therefore the said decision of the Hon'ble Apex Court, in our considered view, is of no help to the appellants. It is no doubt true that when the statutory remedy is provided for redressal of the grievance, the person aggrieved must approach the said forum within the time prescribed under the statute. However, under bonafide mis-conception, if the remedy other than the statutory remedy is undertaken by the aggrieved person, in that case, it is necessary to find out whether the aggrieved person was bonafide pursuing the same or only to give go-bye to the statutory period prescribed for approaching the competent forum. There cannot be a straight jacket formula which can be ipso facto made

applicable to all cases in all circumstances, which in our view shall necessarily depend upon the facts and circumstances of each case.

The learned Single Judge, in our view, after taking into consideration all these factors was justified in refusing to interfere with the discretion exercised by the School Tribunal while condoning the delay in filing appeal and therefore, Letters Patent Appeal suffers from lack of merit and hence the same is dismissed.

So far as the issue of merits of the matter is concerned, it is for the School Tribunal to consider the same, including the issue of waiver.

JUDGE **JUDGE**

*GS.